IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11000 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUBESSINGH D AHIR

Versus

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for Petitioner No. 1-9
..... for Petitioner No. 10-18
MR HD DAVE, ASST. GOVT. PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 10/10/2002

ORAL JUDGEMENT

1. The petitioners herein have, by way of the

present petition, challenged the denial to them the benefits of the 9-18-27 year rule.

2. The present petitioners were initially recruited as armed police constables in different groups of the State Reserve Police force between the years 1965 to 1976. They were then given training as Drivers and were posted as Driver-Constables with certain allowance.

3. From the year 1977 onwards and upto the year 1984, it appears that there was a shortage of qualified drivers with the Police Department and particularly in the administration of the Commissioner of Police, Baroda City (respondent No.2). The 2nd respondent, therefore, invited qualified drivers from the S.R.P. to apply to the post of driver with respondent No. 2, wherein they were required to express their willingness to be transferred. The petitioners accordingly applied and were transferred as Drivers with the Respondent No.2 between the years 1977 to 1984.

4. A scheme evolved by the State Government, which is commonly called as 9-18-27 year rule, was brought into effect by issuing a G.R. dated 5th July 1991 [page 15, Annexure 'C']. This was subsequently modified on 16th August 1994.

4.1 The basis of the scheme was to deal with those category of employees who had no promotional avenues available to them, and were, therefore, deprived of future monetary benefits as also incentives to improve themselves. The basis of the said scheme was that such category of employees could be granted benefits under the scheme, viz. an upward revision in the grade on completion of 9, 18 and 27 years of service. When the petitioners sought for the benefits on their completing 9 years of service, the 3rd respondent herein informed them [Annexure 'D'] that they were not eligible for the benefits.

4.2 The petitioners, therefore, filed Special Civil Application No. 6195 of 1993, which was disposed of by an order dated 14th October 1993, wherein the 1st respondent herein was directed to dispose of the representation [petition] within three months. However, even this representation was rejected and the benefit of the higher grade were denied to the petitioners, mainly on the ground that such benefits are not available to the employees who have obtained transfer on their own request.

5. The petitioners herein mainly contend that the transfer was in fact not on their own request. Various submissions have been made in this regard. The petitioners have set out on page 7 of the petition, eight specific factual grounds in support of the contention that these transfers were not on their own request, in the sense that the petitioners had not sought these transfers for personal reasons. So far as these eight points are concerned, they are factual contentions, and it only requires to be noted that in respect of these eight factual contentions, the respondents have made no categorical denial in their affidavit-in-reply. I have heard the learned counsel for the respective parties at length on this aspect, and I have no hesitation in holding that the transfers in question as effected in the facts and circumstances of the case, cannot be said to be transfers on their own request in the sense that the petitioners sought the transfers for personal reasons. The mere fact that they were required to apply for the transfer and were required to state in the application that they were willing to be transferred to Baroda under the 2nd respondent does not ipso-facto make it a request-transfer.

6. Even otherwise, even if it was presumed that these were request-transfers, the legal effect thereof would not be any different.

6.1 This position has been made amply clear by my decision in Special Civil Application No. 10469 of 1999 decided on 12th September 2002. Learned counsel for the respective parties stated that to the best of their knowledge, no L.P.A. has been preferred from the said decision.

6.2 In the aforesaid decision, the conclusion ultimately drawn is that even where the transfer is on the request of the employee, and even where the transfer is sought and granted for personal reasons, and even where on the transfer being permitted there is loss of seniority, would not make any difference to the eligibility of the employee so far as the 9-18-27 year rule benefit is concerned. This conclusion has been reached by me on the basis of the decision of the Supreme Court in the case of Scientific Adviser to Raksha Mantri vs. V.M. Joseph [1998 AIR SCW 2226]. The principles of the said decision have been discussed in detail in paragraph 4 of my aforesaid decision. After discussing the Supreme Court decision, it has been found that where an employee has been transferred to another place on his own request, and the employee has been placed at the

bottom of the seniority list at the transferred place, merely on this account the period of service rendered by the employee at the earlier place cannot be excluded from consideration in determining his eligibility for promotion. In other words, the Supreme Court has clearly enunciated the principle that merely on account of request-transfer, in considering the eligibility of the employee for the purpose of any benefits which would otherwise be due to him, his length of service at the place prior to the transfer cannot be excluded. Consequently, it becomes obvious that the Supreme Court's decision was on the basic principles of dealing with the criteria required to be kept in mind while dealing with the eligibility of an employee to certain benefits at the transferred place. Consequently, it necessarily follows that whether the employee is being considered for promotion or being considered for grant of benefit of the nine year rule, makes no difference whatsoever to the application of the basic principle laid down in the said decision.

6.3 Thus, as aforesaid, even if the transfers in the present case are hypothetically regarded as transfers on request of the employees, it would still make no difference to the principle laid down in the aforesaid decision.

7. Consequently it is found, held and declared that the present petitioners would be entitled to the benefit of the 9-18-27 year rule as per the G.R. dated 5th July 1991 and as modified by G.R. dated 16th August 1994, by including in such computation the period of service put in by the petitioners as Drivers with the S.R.P.

8. It is further directed that the computation in accordance with the present judgment and direction shall be completed and the necessary benefits actually paid to the petitioners, latest by 15.1.2003, failing which such payment in arrears shall bear interest at the rate of 1% per month.

9. This petition is accordingly allowed and Rule is made absolute with costs.

Direct service is permitted.

(Y.B. BHATT, J.)

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